

Department of Social and Health Services

**DP Code/Title: PL-DB ARC Settlement**

**Program Level - 040 Div of Developmental Disabilities**

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Budget Period: 2003-05    Version: 11    2003-05 Agency Request Budget

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**Recommendation Summary Text:**

This item requests funding for the second and third years of the proposed settlement for the Arc vs Quasim lawsuit filed in 1999. Additionally, this item provides residential and other supports to eligible division clients identified with public safety issues.

**Fiscal Detail:**

**Operating Expenditures**

	<b><u>FY 1</u></b>	<b><u>FY 2</u></b>	<b><u>Total</u></b>
<b>Program 040</b>			
001-1 General Fund - Basic Account-State	11,896,000	35,098,000	46,994,000
001-C General Fund - Basic Account-DSHS Medicaid Federal	9,373,000	28,231,000	37,604,000
<b>Total Cost</b>	<b>21,269,000</b>	<b>63,329,000</b>	<b>84,598,000</b>

**Staffing**

	<b><u>FY 1</u></b>	<b><u>FY 2</u></b>	<b><u>Annual Avg</u></b>
<b>Program 040 FTEs</b>	<b>17.0</b>	<b>34.0</b>	<b>25.5</b>

**Package Description:**

Arc Lawsuit Settlement

In November 1999, the Arc of Washington filed a lawsuit against the Department of Social and Health Services (DSHS) et al asserting that the state of Washington was administering its Medicaid program for individuals with developmental disabilities in a manner that violated the Medicaid Act, the Rehabilitation Act, the Americans with Disability Act, and the equal protection and due process clauses of the Fourteenth Amendment. The suit sought declaratory and injunctive relief that would require the state to offer plaintiffs the full range of services available in Intermediate Care Facilities for the Mentally Retarded (ICF/MRs), or through the Home and Community-Based Services (HCBS) waiver.

Under court order, the department began negotiating a mediated settlement with Arc during the summer of 2000, and reached a tentative agreement in the fall of 2001. The proposed settlement agreement included very specific terms under which the Governor and the Legislature would fund approximately \$14 million (total funds) of services in the 2002 Supplemental, covering Fiscal Year 2003, and then add similar funding in each of Fiscal Years 2004 and 2005.

Under the settlement agreement, Family Support, Day Programs, and Residential Services would be available to either clients currently on the HCBS waiver who need the services or clients not currently receiving a paid service who need these services. Funds would also be used to expand the division's current Quality Assurance efforts and increase the number of case managers. Some of the residential services and day program funds would be available for specific groups of clients, such as those with elderly parents or children in the Voluntary Placement program.

As part of the settlement agreement, clients with Public Safety issues (mental health outplacements, mentally ill offenders, and community protection clients) would be provided residential and day program supports separately from those affected by the lawsuit.

The Legislature appropriated \$14 million in the 2002 Supplemental Budget to expand services within the Division of Developmental Disabilities (DDD) during Fiscal Year 2003. While the proposed settlement agreement has not received final approval from the Federal Court, the department is requesting that the second and third years of the original agreement be recognized and funded.

Public Safety

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The Governor's "Washington State Priorities" include a Public Safety and Health element to "Make our communities safer and healthier places in which to live and raise a family." Accordingly, to increase the safety and security of Washington State residents while (a) reducing the incidents of reported violent crimes, and (b) reducing the percentage of offenders released from prison who are convicted of new crimes within five years, the DDD proposes the following initiative.

DDD has a number of individuals on its caseload that present a potential risk to themselves or other persons in the community, and this decision package will allow DDD to increase its residential capacity to serve these individuals. This decision package addresses services to individuals in four categories:

- 1) Mentally Ill Offenders: DDD will provide intensive supervision for 34 individuals with developmental disabilities being released by the Department of Corrections (DOC) during the 2003-05 Biennium, who were incarcerated for sexual offenses and violent crimes. This supervision will include residential and employment services.
- 2) Community Protection: Provide intensive supervision, and therapies to 30 individuals with developmental disabilities, who are a danger to the community due to their history of sexual offenses and violent crimes.
- 3) Mental Health Diversions: This proposal will fund 34 individuals in crisis, who are utilizing statewide diversion beds but lack funding for permanent placement.
- 4) State hospital Outplacements: the division is asking for funds to provide residential supports to fund outplacements for 43 individuals being discharged from state hospitals. Included in these 43 outplacements are funds to support 33 individuals at an average daily rate of \$297/day, and funds to support 10 individuals at an average daily rate of \$594/day.

1) Mentally Ill Offenders

Since the passage of the Dangerous Mentally Ill Offender Legislation (SSB 5011) in 1999, DDD has been requested to provide community protection services for those individuals with developmental disabilities being released from DOC. These individuals are currently competing for services with other individuals, who have developmental disabilities who also need community protection services, and already reside in local communities.

This proposal would provide case management, residential, therapy, and day programs for 34 individuals scheduled for release from DOC during the 2003-05 Biennium. The Dangerous Mentally Ill Offender (DMIO) committee (comprised of representatives of DOC, DSHS, Community Mental Health, and Law Enforcement) has identified the individuals as needing community protection services upon their release.

An estimated 0.4 FTE is needed (a case management ratio of 1:65) for the intensive case management that this population requires. The case manager will participate in the pre-release engagement services, determine eligibility, develop and monitor service plans, make referrals to residential providers, and coordinate with day program providers and therapists.

2) Community Protection Program

The Community Protection Program serves people with developmental disabilities who have a history of sexual offenses and violent crimes. The individuals live in their own homes with 24-hour supervision and do not go into the community without supervision. Therapy for sex offenders is provided by a licensed sex offender treatment professional (SOTP), and day programs/employment is provided by vendors contracted through the counties.

This proposal would provide case management and residential, therapy, and day programs for 30 individuals with developmental disabilities, who are in need of these services. These individuals are currently living alone, with family members, in jail, homeless, in juvenile rehabilitation centers, the mental health hospitals, or other locations. There are currently 130 individuals living in the community who meet the community protection program criteria. DDD would prioritize services for those individuals, who are considered by professionals as most likely to re-offend.

The division currently serves approximately 270 individuals in residential settings that have been certified to provide community protection services. The agencies applied through the contract process, and had to meet very specific standards to

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provide services.

An estimated 0.5 FTE (a case management ratio of 1:65) are needed for the intensive case management that this population requires and the necessary resource development. Case managers are required to coordinate and attend team meetings that are held at least quarterly (more often if needed), plus intervene, and be available to the individuals and their families. Providers need more assistance and consultation from the case managers for resource development and service provision. This includes ensuring that the specialized training requirements, policies, behavior support plan, and environmental supports are in place for each person.

### 3) Mental Health Diversions

Community psychiatric hospitals and Evaluation and Treatment Centers routinely serve individuals who are clients of DDD. These clients are admitted through RCW 71.05 (involuntary commitment) as being a danger to self, danger to others, or gravely disabled as a result of a mental disorder. When the mental illness is stabilized and the individual is determined to be ready for discharge, few are able to return to existing community residential settings with existing levels of support. Additionally, many individuals are admitted to the hospitals and diversion beds from jail, the streets, or other settings to which they cannot return. In these situations, the division contracts for residential services to provide their ongoing supports. The division is asking for funding to serve 34 individuals with an average daily rate of \$297/day this biennium who were previously stabilized in a diversion bed.

This proposal represents the implementation of one element, of Phase 2, of the DDD/MHD Collaborative Workplan, which is a component of the Federally Mediated Stay Agreement.

### 4) State Hospital Outplacements

The issue of serving individuals with developmental disabilities in the state hospitals has been discussed by the department for several years. The number of individuals with developmental disabilities at the two state hospitals grew from 56 in August 1996, to a high of 92 in August 1998. In October 1998, Western State Hospital was cited by the Health Care Finance Administration for failing to provide active treatment to persons with developmental disabilities during their commitment. The hospital was also cited for not placing persons who were determined stable. Subsequently, the hospital was also cited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for lacking specialized programs for this population.

In December 1998, the Secretary of DSHS established a collaborative workgroup with staff from DDD, the Mental Health Division and the community mental health system. This workgroup was charged with developing a set of recommendations regarding how to reduce the unnecessary hospitalization of dually diagnosed persons, improving services during hospitalization, and facilitating the timely discharge of patients determined psychiatrically stable. Their report was published in April 1999.

In January 1999, the Washington Protection and Advocacy System (WPAS) filed a class-action lawsuit against the state (Allen vs DSHS) alleging abuse and neglect of individuals with developmental disabilities. It further alleged that individuals were denied opportunities for discharge to community programs and were at risk of unnecessary involuntary commitment. The WPAS suit entered court-ordered mediation in October 1999 and reached a mediated settlement on December 2, 1999.

To support this agreement, the department prepared a three-phase program proposal for the 2000 Supplemental Budget. The first phase restructured services at the state hospitals to better meet the needs of individuals with developmental disabilities, and increased the collaboration of community mental health and DDD services. Phase 2 made significant improvements in diversion activities to decrease state hospital admissions and prevent re-admissions. Phase 3 represents the development of a secure long-term treatment facility for individuals whose state hospital stay exceeds 17 days of active treatment. Individuals in the program are anticipated to return to the community with adequate supports. The Legislature funded Phase 3 to be housed at the state psychiatric hospitals. These clients, when stabilized will require funding for residential, day services, and

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therapy, which is included in the request for hospital outplacement slots. The division is asking for funds to support 43 individuals. The division is asking for 33 slots at an average rate of \$297 per day. Because several clients will require 2:1 staffing ratios, the division is asking for an increase in funding for 10 of the 43 hospital outplacements for the 2003-05 Biennium.

5) Program Oversight

The federally mandated settlement provides that a team of four individual national experts monitor the settlement activities and makes recommendations to DSHS for implementing the settlement. Because of increasing costs, the division is asking for an increase of \$10,000 for program oversight.

**Narrative Justification and Impact Statement**

*How contributes to strategic plan:*

This decision package relates to the division's strategic plan in which DDD will effectively and efficiently use resources to accomplish the values, principles, and the mission of the DDD, while maintaining accountability for public and client safety, and authorized resources, DDD will design and maintain an effective system of residential supports and services. Specifically, the components of the decision package will enable the division to provide community protection services to individuals being released from DOC, assist in implementation of the Collaborative Workplan, and provide residential and day program supports for individuals determined likely to pose significant risks to public safety.

*Performance Measure Detail*

**Program: 040**

**Goal: 01D Improve partnership with families/communities, toward opprtnty & self-determin.**

**Output Measures**

1DB Expand family support services.

**Incremental Changes**

**FY 1 FY 2**

1,000 1,800

**Goal: 03D Design/maintain system of residential supports and services**

**Output Measures**

3DB Provide community protection services to DD clients with Public Safety issues.

3DC Increasing the number of MH/DD crisis diversion placements.

**Incremental Changes**

**FY 1 FY 2**

53 107

17 34

**Goal: 06D Effectively/efficiently use resources to accomplish values/principals/ mission**

No measures submitted for package

**Incremental Changes**

**FY 1 FY 2**

**Goal: 12D Design/maintain effective system of employment and day program supports**

**Output Measures**

CD2 Expand employment and day program services.

**Incremental Changes**

**FY 1 FY 2**

700 1,450

*Reason for change:*

Arc Lawsuit Settlement

The lawsuit is similar to suits filed in other states in the last few years. In states where the suit went to trial, the plaintiffs

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generally prevailed at significant costs to the state. Many states have chosen to mediate settlements. It has been estimated that if Washington State were to lose in court, the cost of providing the services requested by Arc could potentially cost \$450 million in total funds.

Public Safety

1) Mentally Ill Offenders

Since the passage of the Dangerously Mental Ill Offender (DMIO) Legislation, DOC expects that DDD will provide community protection services for people, who are being discharged from the correctional facilities. At present, there is not enough funding available to provide services for the people coming out of the prison system, as those individuals who need community protection services who are living on their own, in jail, homeless, or with family members.

2) Community Protection Program

This decision package will provide community protection services for 30 people who are dangerous to their community because of their histories of sexual offenses and other violent crimes, and those released from the juvenile justice system who have no other living options available to them.

3) Mental Health Diversions

This proposal provides funding for individuals who have been admitted to the state psychiatric hospitals or crisis diversion beds who do not have a residential placement, or are in settings to which they cannot return.

4) State Hospital Outplacement

This package funds placements for 43 individuals residing in the state hospital.

***Impact on clients and services:***

Arc Lawsuit Settlement

The proposed settlement would expand the availability of services to clients currently on the HCBS waiver, and provide services to eligible clients not currently receiving a paid service.

Public Safety

1) Mentally Ill Offenders

The individuals who will be served by this decision package are being returned to their communities after several years of being incarcerated for crimes they have committed. The majority have no family to return to, or they cannot return to the family home because the person they victimized is living in the home.

A specialized environment will be provided that minimizes risk to the community, yet still enables these individuals to receive the services they need. The program will provide the needed structure that will enable the offenders the opportunity to transition from incarceration back to their communities. Other living arrangements would not provide community safety.

2) Community Protection Program

A large majority of the individuals who will be served by this decision package are receiving very minimal services from

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DDD, because of their dangerousness, i.e., they cannot live in Adult Family Homes or Residential Care Centers because of their behaviors and the lack of supervision. The Community Protection Program provides a specialized environment, where the participant has agreed to supervision in a safe, structured manner that has specific rules, requirements, restrictions, and expectations in order to maximize community safety. A few of these individuals receive Family Support and Medicaid Personal Care.

3) Mental Health Diversions

The funding provides residential supports, primarily through Intensive Tenant Support programs. It also provides day program assistance and professional therapies, such as counseling. Funding will provide residential supports reserved for individuals in the crisis diversion beds who lack funds for permanent placement and are at risk of being hospitalized.

4) State Hospital Outplacement

The funding provides residential supports, primarily through Intensive Tenant Support programs. It also provides day program assistance and professional therapies, such as counseling. The individuals who are admitted to Western State Hospital are determined to be class members of the Allen lawsuit, so delays in discharge once psychiatrically stable, could result in the continuation of the lawsuit.

***Impact on other state programs:***

Arc Lawsuit Settlement

Some of the Arc settlement funds would support dually diagnosed clients served by both DDD and the Mental Health Division (MHD). Additionally, some funding would be available to expand day and employment programs, affecting the counties.

Public Safety

1) Mentally Ill Offenders

Not applicable

2) Community Protection Program

Not applicable

3) Mental Health Diversions

These individuals are clients of DDD. However, if they are admitted to the state hospitals, they are funded through MHD, until time as they are discharged from the state hospital.

4) State Hospital Outplacement

As above, these clients who are admitted to the state hospitals are funded through MHD, until such time as they are discharged from the state psychiatric hospital.

***Relationship to capital budget:***

None

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***Required changes to existing RCW, WAC, contract, or plan:***

None

***Alternatives explored by agency:***

Arc Lawsuit Settlement

Under the direction of the Attorney General's Office (AGO), the division conducted an analysis of the potential costs of losing the Arc suit. Additionally, the AGO reviewed the status of similar lawsuits in other states. Based on these two reviews, the AGO and DSHS recommended to the Governor's Office and chairs of the Legislative Fiscal Committees that the division pursue a mediated settlement.

Public Safety

1) Mentally Ill Offenders

Without the community protection program, the 34 individuals will be discharged from DOC with only minimal supervision from the community correction officer assigned to them and minimal contact with the Regional Support Network for therapies. Very few would qualify for Medicaid Personal Care services, Adult Family Homes or Adult Residential Care facilities because of the potential of victimizing other residents.

The best alternative is a specialized environment where the participant has agreed to supervision in a safe, structured manner that has specific rules, restrictions, and expectations for personal responsibility to maximize community safety.

2) Community Protection Program

This population could live in situations like Adult Family Homes, Adult Residential Centers, or group homes, but the other people living with them, and in their neighborhoods would be at risk of sexual assaults or other violent crimes, such as arson.

Very few would qualify for Medicaid Personal Care services, Adult Family Homes, or Adult Residential Care facilities because of potential victimization to the other residents.

The best alternative is a specialized environment where the participant has agreed to supervision in a safe, structured manner that has specific rules, restrictions, and expectations for personal responsibility to maximize public safety.

3) Mental Health Diversions

An option would be to use the diversion beds for long-term residential support; however, this would eliminate the intent of establishing alternatives for short-term behavioral support, and crisis response, and lead to an increase in hospital admissions.

4) State Hospital Outplacement

An option would be the continued hospitalization of individuals whose treatment teams have been determined ready for placement. This could jeopardize hospital certification, accreditation, and possibly reactivate the Allen lawsuit.

Another option would be to place individuals back into the community setting where they resided prior to hospitalization. In many cases, they would return to their own apartments or family homes where their potentially dangerous behaviors would be unsupervised. The individuals who have been placed from the hospitals into supervised residential settings may have no

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other safe settings in which to return.

***Budget impacts in future biennia:***

Arc Lawsuit Settlement

There will be a significant bow wave to the proposed settlement. A spreadsheet displaying the out-year costs is attached.

Public Safety

There will be a bow wave to supporting these individuals.

***Distinction between one-time and ongoing costs:***

There are minor one-time costs associated with the new FTEs such as equipment purchases. The additional funding will primarily support service expansion.

***Effects of non-funding:***

Arc Lawsuit Settlement

If the Arc settlement is not funded at the negotiated level, or if the funds are provided in a manner significantly different than negotiated, the Arc will return to court.

Public Safety

1) Mentally Ill Offenders

The individuals described in this decision package will be discharged from prison to their local communities with very minimal supervision and therapies. Many will be required to register as sex offenders with the local sheriff's office. Without providing community supervision, assistance in finding housing, and employment, they may re-offend and return to the correctional system.

2) Community Protection Program

Many of the individuals described in this decision package are either never charged for their crimes or are found incompetent to stand trial and charges are dropped. They continue to live in their communities with no supervision and are very likely to re-offend.

3) Mental Health Diversions

These individuals have no other residential options available to them, so if their supports are not funded there will be increases in psychiatric facility admission and lengths of stay in the state hospitals. This will not be acceptable to the Federal Court overseeing the states progress in the Mediated Settlement.

4) State Hospital Outplacement

These individuals have no other residential options available so if their supports are not funded there will be increases in psychiatric facility admission and lengths of stay in the state hospitals. This will not be acceptable to the Federal Court overseeing the state's progress in the Mediated Settlement.

***Expenditure Calculations and Assumptions:***



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See attachment - DDD PL-DB ARC Settlement.xls

**Object Detail**

		<b><u>FY 1</u></b>	<b><u>FY 2</u></b>	<b><u>Total</u></b>
<b>Program 040 Objects</b>				
A	Salaries And Wages	840,000	1,680,000	2,520,000
B	Employee Benefits	198,000	396,000	594,000
E	Goods And Services	17,000	174,000	191,000
G	Travel	30,000	60,000	90,000
N	Grants, Benefits & Client Services	20,184,000	61,019,000	81,203,000
<b>Total Objects</b>		<b>21,269,000</b>	<b>63,329,000</b>	<b>84,598,000</b>

**DSHS Source Code Detail**

<b>Program 040</b>		<b><u>FY 1</u></b>	<b><u>FY 2</u></b>	<b><u>Total</u></b>
<b>Fund 001-1, General Fund - Basic Account-State</b>				
<b><u>Sources</u></b>	<b><u>Title</u></b>			
0011	General Fund State	11,896,000	35,098,000	46,994,000
<b>Total for Fund 001-1</b>		<b>11,896,000</b>	<b>35,098,000</b>	<b>46,994,000</b>
<b>Fund 001-C, General Fund - Basic Account-DSHS Medicaid Federa</b>				
<b><u>Sources</u></b>	<b><u>Title</u></b>			
19TA	Title XIX Assistance (FMAP)	8,478,000	26,154,000	34,632,000
19UL	Title XIX Admin (50%)	895,000	2,077,000	2,972,000
<b>Total for Fund 001-C</b>		<b>9,373,000</b>	<b>28,231,000</b>	<b>37,604,000</b>
<b>Total Program 040</b>		<b>21,269,000</b>	<b>63,329,000</b>	<b>84,598,000</b>